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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,515	08/11/1999	ROBERT PAUL BLACK	THOM-0007	6283

7590

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/25/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/368515

Applicant(s)

Black

Examiner

John Guarniello

Group Art Unit

1941

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 2/6/2003
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-12 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-12 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

15. The Examiner acknowledges paper # 16 the the amendment of 2/6/2003.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

17. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 5,344,707 in view of Borge 3,616,150.

Snyder describes fillings as fiberballs used for pillows, cushions and similar support utilities from blends, (see abstract; column 6, lines 53-66). Snyder describes how the fiberballs can be made of blends of polyester, (column 1, lines 30-50; column 2, lines 9-23). Snyder differs from the claimed invention because it is silent about other fibers in the blend but suggests (column 6, lines 60-68) it is possible to make fiberballs (corresponding to filling) from various blends of fibers.

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Borge describes laminated articles of an outer layer of textile fabric and an innerlayer of textile fabric, (see abstract). Borge describes using blends of natural (corresponding to cellulose or cellulosic materials of the claimed invention) and synthetic materials (corresponding to polyester of the claimed invention) and combinations thereof for improving thermal properties (corresponding to insulation properties of the claimed invention), (column 2, lines 2-35; lines 37-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the blends of Borge for the blend of Snyder motivated with the expectation that since the amount of the blends can be optimized as noted by Snyder above and the materials of the blends can be optimized as noted by Borge above the properties of bedding would be obvious since there is no defined structure for the fabric. It is the Examiner's position that the patentability of the product does not depend upon its method (spinning) of production. If the product in the product-by-process claim is the same or is obvious from a product of the prior art, the claim is

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unpatentable even though the product was made by a different process, In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. The claimed invention is still obvious.

18. Applicant's arguments regarding the rejection of record were considered but in view of the new grounds of rejection they are not applicable.

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Newell 5,066,527 describes sorptive articles with blends of textiles, see abstract, whole document. Vogt describes spinning processes, (see whole document).

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

April 15, 2003



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700